

**REMARKS**

The Applicants thank the Examiner for the examination to date and respectfully request reconsideration of the present application in view of the foregoing amendments and the reasons that follow.

**I. Status of the Claims**

Independent claim 15 is amended to recite an active component and to exclude creatine as an active component. Support for the term “active component” can be found in, *inter alia*, the third full paragraph on page 4 of the Specification as filed; support for the exclusion of “creatine” can be found in, *inter alia*, the lack of its mention on the list of the candidates as the composition in the second full paragraph on page 4 of the present Specification. Dependent claim 21 is amended to further clarify the list of FGF-7 expression accelerators, with similar support as aforementioned. No new matter is introduced, and claims 15 and 17-21 are currently pending to be examined on their merits.

**II. Claim Rejection – 35 U.S.C. § 102**

Claims 15 and 17-20 are rejected under 35 U.S.C. § 102, as allegedly being anticipated by US 2004/0171693 (“Gan”). The Applicants respectfully traverse the rejection.

*Gan does not disclose every element recited in the present claims*

While not acquiescing to the grounds of the rejection, the Applicants hereby amend present independent claim 15 to exclude “creatine” as an active component in the presently claimed composition. As a result of the amendment, Gan does not teach each and every element recited in present claim 15. In fact, Gan’s teachings are **opposite** to the embodiment claimed in present claim 15. Specifically, Gan’s teachings are directed to using one or more creatine compounds as an active agent. *See* Gan, ¶[0009]. While Gan also discloses uses of “AMP, L-carnitine, NADP,” Gan describes these only as **additional** energy enhancing actives. *See* Gan, ¶[0009]. In other words, regardless of whether Gan uses any, or all, of these additional energy

enhancing actives, Gan's composition would always contain at least a creatine as an active agent – this is particularly evident in the Examples of Gan. Accordingly, Gan does not disclose each and every element recited in present independent claim 15, and thus Gan's teachings cannot anticipate claim 15, or its corresponding dependent claims.

*No inherency can be established*

The Office appears to be of the position that Gan inherently teaches the presently claimed method. The Applicants respectfully traverse. The embodiment as recited in present claim 15 is related to applying a composition to a subject in need thereof such that the thickness of the subject's hair is maintained or even becomes thicker than before the application after a month of application. Nowhere does Gan disclose these features. Therefore, anticipation cannot be shown unless Gan teaches the same purpose recited in the preamble.

The Office alleges that Gan discloses a method for increasing hair growth and for maintaining the normal cycle of hair replacement and increasing the diameter of hair already present. Office Action, page 5. The Applicants respectfully traverse and further respectfully submit that the holding of the Federal Circuit in *Rapaport* applies.

While Gan discloses hair growth, Gan's teachings are directed to increasing DNA synthesis of papilla cells, which may result in growing hair within one phase of a normal cycle. Gan, ¶[0006]. At the outset, as already described in the first full paragraph on page 2 of the present Specification, at the time of the filing of the present application, what is involved in hair thickening remained unknown. The Office has established no evidence that increasing DNA synthesis of papilla cells would always result in maintaining and thickening of a hair over at least one complete hair growth cycle (i.e., at least one month). Indeed, Gan has shown an increase in length or even in diameter of hair in the Examples, but the treatment of Gan lasts at most 10 days, not "at least one month" as recited in the present claims. As the Applicants previously explained in the Amendment filed on January 30, 2009, the presently claimed invention is different. Specifically, the duration of the application of the presently claimed methods is at least one month. This is even more true when the presently claims now recite that the

composition does not comprise creatine, the main active ingredient of Gan. These distinctions are even more evident in present claim 21. Thus, in accordance with MPEP § 2112, no inherency can be established.

Accordingly, at least in view of the foregoing, the Applicants respectfully request that the rejection be withdrawn.

### **III. Double Patenting**

Claims 15, and 17-21 are rejected on the ground of non-statutory double patenting as allegedly being unpatentable over claims 4 and 5 of co-pending Application No. 11/655,134. The Applicants request that the rejections be held in abeyance until the other rejections are overcome in the instant application. Because the present application was filed (May 8, 2006) **before** Application No. 11/655,134 (November 19, 2007), the Applicants respectfully request that the rejection be withdrawn in accordance with MPEP § 804, when the double patenting rejection becomes the last remaining rejection.

**CONCLUSION**

The Applicants believe that the present application is now in condition for allowance and respectfully request favorable reconsideration of the application.

The Office is invited to contact the undersigned by telephone if a telephone interview would advance the prosecution of the present application.

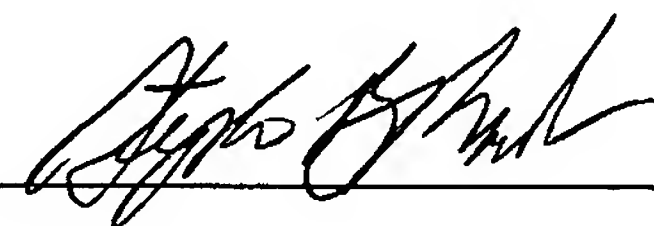
The Office is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, the Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extensions fees be charged to Deposit Account No. 19-0741.

Respectfully submitted,

Date

Nov. 5, 2010

By



FOLEY & LARDNER LLP

Customer Number: 22428

Telephone: (202) 672-5569

Facsimile: (202) 672-5399

Stephen B. Maebius

Attorney for the Applicants

Registration No. 35,264